Senate Committee on Natural Resources
January 30, 2009

California Low Emission Vehicle Program
Opposition Paper

The Montana Automobile Dealers Association and the Alliance of Automobile Manufacturers – a trade association of eleven car and light truck manufacturers including BMW Group, Chrysler LLC, Ford Motor Company, General Motors, Jaguar Land Rover, Mazda, Mercedes-Benz, Mitsubishi Motors, Porsche, Toyota, and Volkswagen – strongly oppose the adoption of California's Low Emission Vehicle (CA LEV) Program.

What is CA LEV?
Beginning in the 1960's California was the first entity to regulated tailpipe emissions from automobiles. The federal government soon began to regulate tailpipe emissions from vehicles as well; however it allowed California to maintain its own emissions program due to the state's unique air quality challenges. Section 209 of the U.S. Clean Air Act allows California to set its own emissions standards contingent on a waiver of approval from U.S. EPA. Section 177 of the Clean Air Act allows other states to choose to follow California's emissions programs in lieu of the federal standards, as long as the state maintains identical provisions to what California has established.

The California Low Emission Vehicle Program (CA LEV) is California's emissions program. CA LEV is a series of standards regulating the tailpipe emissions and fuel efficiency of motor vehicles. Specifically, CA LEV is comprised of three sections – LEV II, the ZEV Mandate, and the proposed fuel economy standards (commonly referred to as AB 1493 or the Pavley standards).

The first component of CA LEV is the Low Emission Vehicle program, or LEV II. LEV II regulates smog and ozone-forming emissions such as exhaust $PM_{2.5}$, NOx, volatile organic compounds, carbon monoxide, and air toxics.

The second component is the Zero Emission Vehicle Mandate, or ZEV Mandate. The ZEV Mandate is a battery-powered/hydrogen fuel cell mandate also intended to reduce smog and ozone-forming emissions.

These two smog and ozone forming emissions provisions in the California program provide NO MEASUREABLE environmental or clean air benefit beyond the existing federal program, called Tier 2, which Montana already follows. Often the adoption of CA LEV is painted as an effort to "clean the air"; however that misrepresents the benefit that the CA LEV program provides.

It is the third component – the proposed fuel economy standards – that most people today associate with CA LEV and is likely the reason this bill was introduced. Current law does not allow any state, including California, to enforce California's fuel economy standards at this time for reasons explained below. The federal government's comparable program is the Corporate Average Fuel Economy (CAFE) standards.

Recent Developments
In December 2007, the Energy Independence and Security Act (EISA) was signed into law. The legislation's centerpiece was an unprecedented increase in Corporate Average Fuel Economy (CAFE) standards. This landmark legislation requires a dramatic 40 percent increase in mileage standards by 2020, marking the first major overhaul to CAFE requirements since 1975.

This comprehensive and aggressive response to the climate change issue will result in a 30 percent reduction in CO_2 emissions from individual vehicles by 2020. These new standards present one of the biggest challenges in the automobile industry's history and will require automakers to continue creating, developing, and introducing cutting-edge fuel efficient vehicles.

Not only will EISA provide significant reductions in CO_2 emissions, but it will also reduce our nation's dependence on foreign oil and increase the production of clean and alternative fuels. EISA is estimated to save 18 billion gallons of

gasoline per year by 2020 as compared to projected consumption levels; the equivalent of taking 30 million cars off the road. In addition, the legislation will reduce oil consumption by 1.1 million barrels a day in 2020 compared to projected consumption levels and require that the United States produce 21 billion gallons of advanced biofuels.

In April 2008, the National Highway Traffic Safety Administration (NHTSA) responded to EISA and released its proposal for national fuel economy standards through 2015. This Notice of Proposed Rule Making (NPRM):

- increases fuel economy standards for passenger cars from the current standards of 27.5 mpg to 35.7 mpg;
- increases fuel economy standards for light trucks from 23.5 mpg in 2010 to 28.6 mpg;
- represents an annual 4.5 percent increase in fuel economy over a 5-year period;
- far exceeds the 3.3 percent annual increase proposed by Congress in EISA; and
- already calls for a 25 percent increase in the national fuel economy average.

NHTSA's NPRM allows for a fair comparison of the federal and California standards through 2015.

	California Regulations[1]	Federal Regulations[2]
2011*	26.7 mpg	27.8
2012	29.5 mpg	29.2
2013*	29.9 mpg	30.5
2014*	30.4 mpg	31.0
2015*	31.3 mpg	31.6

Combined fuel economy averages for the new light duty vehicle fleet – both passenger cars and light trucks.
**Federal program exceeds California standards*

In 2011, and then again in 2013 – 2015, the combined fuel economy averages for the new light duty vehicle fleet – both passenger cars and light trucks – is higher under the federal proposal than it is under the California standards. The proposed regulations will result in a 521 million metric ton reduction of carbon dioxide emissions; a savings of nearly 55 billion gallons of fuel; and over $100 billion in savings on the cost of fuel over the lifetime of vehicles covered by the regulations.

As the NPRM for model years 2011 – 2015 indicates, the 40 percent increase in fuel economy standards by 2020 set by Congress in EISA is just a minimum increase. The legislation calls for NHTSA to set standards through 2020 based on the **maximum feasible technology** available to auto manufacturers. In fact, the 4.5 percent annual increase in fuel economy proposed by NHTSA in its NPRM is far more than the 3.3 percent annual increase that would be needed to meet NHTSA's minimum requirements, and the final standard may be even more stringent. Automakers fully expect that the next series of proposed regulations, establishing standards for model years 2016 – 2020, will take the federal standard beyond the minimum 35 mpg industry wide average dictated in EISA.

On January 26, President Obama directed the Department of Transportation (DOT) and NHTSA to quickly finalize the new CAFE standards for model year 2011. In order to adhere to appropriate lead time requirements for manufacturers, the model year 2011 standards must be finalized by March 30, 2009. Additionally, President Obama directed DOT and NHTSA to thoroughly review the proposed standards for subsequent model years to ensure that all comments and legal considerations are reflected in the final rule.

The auto industry shares Obama's urgency in finalizing these standards and would further encourage DOT and NHTSA to release all model year standards simultaneously.

California Waiver Status from U.S. EPA

With the federal government's adoption of the Energy Independence and Security Act of 2007, U.S. EPA showed its support for a strong national program by denying California's request for a waiver to implement its own fuel economy

[1] California Air Resources Board, "Comparison of Greenhouse Gas Reductions for the United States and Canada Under U.S. CAFE Standards and California, An Enhanced Technical Assessment", February 25, 2008 – Table 6: CA CO2-Equivalent Standards and Estimated Fuel Economy in Other States – page 10.
[2] Federal Register, Volume 73, No. 86, Friday, May 2, 2008, "Combined industry wide average fuel economy...", page 24355.

regulations (AB 1493) as part of the pre-existing CA LEV standards. This action prohibits California and all other states from implementing CA LEV's proposed fuel economy regulations at this time. While this decision is being appealed by California and several other states, current law does not allow for the implementation of AB 1493.

On January 26, President Obama directed EPA to review its decision regarding California's waiver request; however the outcome of that review remains in question. The President's assurance that he's seeking a "comprehensive approach that makes our economy stronger and our nation more secure," positively reflects the auto industry's position that EISA is the appropriate mechanism to regulate transportation sector greenhouse gases, not the California standards.

Until a resolution is reached on the California waiver, states that adopt CA LEV will only be able to implement its smog and ozone forming emissions programs that provide no environmental benefit above and beyond the existing federal emissions program.

In addition, even if the waiver denial were to be overturned, AB 1493 may still be unenforceable. Independent of the Clean Air Act waiver requirements, the Energy Policy and Conservation Act (EPCA) expressly preempts any state law or regulation related to fuel economy standards. EPCA provides that, "no state...shall have authority to adopt or enforce any law or regulation related to fuel economy standards," once the federal regulations are in place, 49 U.S.C. §32919(a). Due to the fact there is a direct relationship between CO_2 emissions and fuel economy, it is readily apparent that California's greenhouse gas standards are related to fuel economy.

There are ongoing proceedings in the Second Circuit Court of Appeals, as well as at the District Court level in the First, Ninth, and Tenth Circuits regarding the EPCA preemption issue. If EPCA is found to have a preclusive effect on state regulations, the outcome of the California waiver decision is immaterial. The issue must be conclusively resolved by the Courts before California or any other state can have confidence in the validity of the proposed CA LEV fuel economy standards.

The automobile industry strongly believes a single, aggressive, national fuel economy standard is the appropriate means of addressing transportation sector greenhouse gas emissions. The Energy Independence and Security Act of 2007 is the vehicle for those standards. EISA applies a high standard to all 50 states that is good for both consumers and energy security. The auto industry believes that states can also address the climate change issue – as it relates to the transportation sector – by supplementing the federal government's work through various policies, including incentivizing the purchase and use of alternative fuel and advanced technology vehicles.

Facts About CA LEV

1. **CA LEV will result in product restrictions.**

   Automakers believe a national fuel economy standard is better than California's proposed fuel economy standards because the California program is too aggressive too soon for the time frame automakers need to design and launch our vehicles. The federal program provides the flexibility automakers need to meet its rigorous fuel economy standards across the entire country. The California program requires automakers to achieve its technically infeasible standards individually in each state that implements the program, based on each state's unique sales mix. The only cost-effective way to comply with the California standards is to restrict the sale of specific vehicles. This means limited availability on the light trucks and SUVs that Montana residents favor.

   In addition, expert economists predict the average cost of new vehicles sold will increase by at least $3,000 under CA LEV.

2. **Significant reductions in vehicle choice will disproportionately impact Montana because of its unique market.**

   Montana residents favor light trucks and SUVs with a sales mix of approximately 66% trucks to 34% passenger cars. In comparison, California, the state that designed and will retain control over the regulation has a sales mix

of approximately 46% trucks and 54% passenger cars. A national standard allows manufacturers to balance Montana's fleet, which leans toward trucks, against California's fleet, which leans toward cars. The California standards call for each state to conform to California's designated fuel economy averages individually. In order to comply in Montana, automakers will likely rely on product restrictions. This will severely limit the availability of the light trucks and SUVs that Montana residents like to drive.

3. **Adoption of CA LEV will not support the state's commitment to E85 technology and infrastructure.**

   The California standards constrain the sale of E85 vehicles. In model year 2008 there were 30 models of flex fuel vehicles (FFVs) offered to consumers. Only 19 of those models were available in California or "California states." As a result, California has the lowest FFV penetration rate in the nation. Product restrictions under CA LEV are likely to get even worse, particularly if the California Air Resources Board (CARB) continues down its intended path and adopts an updated Low Emission Vehicle program, or LEV III. It is expected that the new emissions program will require the average vehicle to meet SULEV (Super Ultra Low Emission Vehicle) exhaust standards. To date, no FFV has certified to the SULEV standard.

   In addition, should the proposed fuel economy standards ever be implemented, there is no practical way for manufacturers to get credit for producing or selling E85 vehicles under the California program. In order for manufacturers to get credit for their FFVs, manufacturers need to provide evidence of how many miles the vehicles have traveled on E85 fuel. An expert retained by California to testify on the issue of alternative fuels stated, under oath, that it would not be prudent for vehicle manufacturers to rely on the sale of FFVs to generate sufficient credits to comply with the greenhouse gas standards proposed in CA LEV.

4. **Montana should not cede its regulatory authority to California.**

   CA LEV is a California program designed by California legislators and regulators – none of whom are accountable to Montana or its residents. By adopting CA LEV, Montana is ceding its authority to a state that is vastly different and tying itself to all future regulatory changes that California makes.

   Divergent market trends, economic drivers, natural resources, and air quality concerns separate Montana and California. Adoption of CA LEV will lead to repercussions in not only the automobile industry, but in the agriculture, tourism, and forestry, construction, ethanol, and many other industries as well.

For these reasons MADA and the Alliance strongly oppose CA LEV. The auto industry believes that the national fuel economy program outlined in EISA and NHTSA's recent NPRM applies a high standard to all 50 states that is good for both consumers and energy security. This comprehensive, national approach to the climate change issue will reduce greenhouse gas emissions across the entire country without the added disadvantages associated with CA LEV.

For more information on the industry's opposition to the California Low Emission Vehicle Program please contact the Alliance or MADA. Extensive materials are available to support and further explain all the issues outlined in this document.

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